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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:)	Case No.: 18-10792-LED
)	
Lucky Dragon Hotel & Casino, LLC,)	Chapter 11
)	
Debtor.)	Hearing Date:
_____)	Hearing Time:

**DEBTOR’S MOTION FOR ORDER PURSUANT TO 11 U.S.C.
§§ 105(a), 363(b), 1107(a) AND 1108 AUTHORIZING, BUT NOT
DIRECTING, THE DEBTOR TO HONOR CERTAIN PREPETITION
OBLIGATIONS AND MAINTAIN CUSTOMER PROGRAMS**

Lucky Dragon Hotel & Casino, LLC, the above-captioned debtor and debtor-in-possession (the “**Debtor**”), hereby moves this court (the “**Motion**”) for the entry of an order authorizing, but not directing, the Debtor to (a) pay certain prepetition claims of various casino patrons, and (b) maintain its customer programs pursuant to sections 105(a), 363(b), 1107(a) and 1108 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “**Bankruptcy Code**”). In support of the Motion, the Debtor respectfully states as follows:

Jurisdiction

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2 1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This
3 matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this
4 proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

5 2. The statutory bases for the relief requested herein are sections 105(a) and 363(b)
6 of the Bankruptcy Code.
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Background

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9 3. The Lucky Dragon Hotel & Casino is the first casino resort in Las Vegas designed
10 from the ground up to create an authentic Asian cultural and gaming experience. Opened in
11 November 2016, the casino property originally started with: (i) a 27,500 square foot, two-level
12 casino; (ii) 37 gaming tables and 287 slot machines; (iii) 203 hotel rooms, including 14 suites
13 and a penthouse; (iv) 4 Asian inspired restaurants; (v) 3 bars and lounges; and (vi) a first class
14 spa (collectively, the “**Resort**”). Currently, the enterprise employs 98 people and is primarily
15 operating only the hotel and limited food and beverage service; however, when fully operating, it
16 is projected the Resort will employ 475 people.
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18 4. The Lucky Dragon anticipates that once its operation is stabilized through either
19 the reorganization or sale of the Property, it will be profitable by capitalizing on the underserved
20 Asian gaming community and customers, as well as the growth of the local market on the North
21 Strip. The Debtor’s initial core customers consisted of the local Las Vegas Asian and non-Asian
22 market, the regional Asian population, including Los Angeles and San Francisco, and the
23 International Asian visitor, including travelers from Mainland China, Taiwan and Canada.
24 Indeed, nearly 5 million Asian Americans live in California alone, and 200,000 more live in Las
25 Vegas. The Debtor anticipates that with a proper marketing budget and the sufficient
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1 stabilization of its operations, coupled with the growth of and development of the North Strip
 2 corridor, including the expansion of the Las Vegas Convention Center, the Resort will flourish,
 3 particularly in the local Las Vegas market.

4 5. The Lucky Dragon Hotel and Casino primarily consists of 2 entities. Lucky
 5 Dragon, LP, which owns the real estate and improvements at 300 West Sahara Avenue, Las
 6 Vegas, Nevada (the “**Property**”), and employs 68 full time and 30 part-time people. The
 7 gaming, hotel and resort operations are then owned and controlled by the Debtor, the Lucky
 8 Dragon Hotel and Casino, LLC, which also leases the 98 employees from Lucky Dragon, LP.
 9 The capital structure between the companies includes approximately 179 individuals who
 10 invested \$500,000 each, or \$89,500,000 in Lucky Dragon, LP, through the Immigrant Investor
 11 Program, or what is commonly referred to as EB-5 investments.¹ In addition, the enterprise is
 12 encumbered by 2 loans from Snow Covered Capital, LLC (“**Snow Covered**”), including an
 13 initial \$30,000,000 construction loan facility, as well as a \$15,000,000 revolving loan
 14 (collectively, the “**Snow Covered Loans**”). The Loans, in turn, are secured by a deed of trust
 15 dated May 3, 2016, and recorded against the Property. As of the date hereof, Lucky Dragon
 16 Holdings owes Snow Covered approximately \$48,877,969.15.

17 6. On September 1, 2017, Snow Covered recorded a Notice of Default with the
 18 Clark County Recorder, starting the foreclosure process with respect to the Property. As of the
 19 Petition Date, a foreclosure sale is set for February 22, 2018. In order to reorganize, preserve 98
 20 jobs, facilitate the orderly payoff of Snow Covered, and the goodwill of the Resort, the Debtor
 21 filed its Chapter 11 case. Looking forward, the Debtor anticipates a quick auction, which will
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 25 ¹ An EB-5 visa is an opportunity for qualified foreign investors to obtain a Green Card for
 26 themselves or their families through the Immigrant Investor Program, which was established by
 27 Congress in 1992. The EB-5 program authorized the U.S. Citizenship and Immigration Services
 to grant Green Cards to foreign investors who help create or save jobs for U.S. citizens. In this
 case, the Debtor and Lucky Dragon, LP qualified for the EB-5 program.

1 pay Snow Covered in full, provide fresh capital, and reenergize the project, such that it can
2 become profitable and expand into full operation as quickly as possible.

3 7. Indeed, the Debtor filed its case in good faith, to preserve jobs, pay its creditors
4 and provide certainty to the market with respect to the Property and the Resort. In order to
5 facilitate its quick emergence from bankruptcy, the Debtor retained Spectrum Gaming Capital
6 (“SGC”) as its financial advisor. Prior to the filing, the Debtor, through SGC, started actively
7 showing the Property and the Resort to interested parties, many of whom expressed serious
8 interest in the assets and in amounts that would pay Snow Covered in full. Therefore, the Debtor
9 anticipates running a quick, but thoughtful auction of the Property and Resort, so that not only
10 are Snow Covered’s secured claims are protected, but unsecured creditors are also given an
11 opportunity to recover for their claims, and EB-5 investors are given an opportunity to preserve
12 their investments, to the extent each are possible. Accordingly, the Debtor believes a Chapter 11
13 sale process in this case is the best opportunity for all interested parties to preserve and maximize
14 the value of the Property and the Resort.
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17 8. In the ordinary course of operating its hotel and casino, the Debtor routinely
18 issues slot vouchers and gaming chips of various denominations in order to facilitate its
19 customer’s ability to place wagers on the casino floor. The Debtor surmises that many Lucky
20 Dragon patrons currently possess gaming currency issued by the Debtor (the “**Outstanding**
21 **Gaming Currency**”). Although difficult to estimate the precise amount of Outstanding Gaming
22 Currency, the Debtor routinely accounts for the amount of Outstanding Gaming Currency. As of
23 the Petition Date, the Debtor estimates that its patrons are in possession of approximately
24 \$50,000 in Outstanding Gaming Currency.
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1 9. Additionally, the Debtor offers several promotional offerings, rewards clubs, and
2 loyalty programs (the “**Customer Programs**”) which cater to Lucky Dragon casino-goers.
3 Through operation of the Customer Programs, Lucky Dragon patrons can earn discounted hotel
4 rooms, parking upgrades, VIP passes to various events, and rewards points for use within the
5 hotel and casino. The Customer Programs are critical to the Debtor’s business; particularly, they
6 promote brand loyalty, enhance the customer experience at the Lucky Dragon, and help generate
7 the revenue stream with which the Debtor relies upon to operate.
8

9 10. First, the Debtor’s most ubiquitous Customer Program is its property-wide
10 Dragon Club. Through the Dragon Club, most purchases, hotel stays, and wagers at the Debtor’s
11 hotel and casino allow the guest to earn rewards points.

12 11. The rewards points, in turn, can be redeemed by a participating member for
13 discounted accommodations, meals, or wagers at the Lucky Dragon. More points correspond
14 with more attractive benefits and privileges. The rewards points accumulated by each member of
15 the Dragon Club generally remain outstanding unless they are redeemed or forfeited. As of the
16 Petition Date, the Debtor estimates approximately \$5,000 in Customer Program obligations
17 remain outstanding.
18

19 12. Second, the Debtor presents certain casino patrons and hotel guests with a variety
20 of individualized offers and accommodations. Substantially all of these customer offers are
21 bespoke, custom designed offerings based on the particular preferences of the customer and are
22 delivered through direct marketing campaigns. By way of example, when the casino is
23 operating, an offer can include free play credits on the patron’s casino game of choice,
24 complimentary hotel stays, complimentary meals and free event tickets, among others. The
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1 Debtor generally only incurs an obligation with respect to the aforementioned offers when such
2 offers are accepted and redeemed.

3 13. As part of their normal business operations, the Debtor relies upon the members
4 of the Customer Programs, and other patrons, to frequent its hotel and casino in order to continue
5 their business operations. The debtor will continue to require the same during the pendency of
6 the Chapter 11 Case. As such, the importance of maintaining the administration of the Customer
7 Programs is paramount to the Debtor's ability to compete in the highly competitive gaming and
8 entertainment space in Southern Nevada. Without maintenance of the Customer Programs, the
9 Debtor's business will suffer as a result of diminished confidence in the ongoing operation of the
10 Lucky Dragon.
11

12 14. Indeed, failure to maintain the Customer Programs will likely inhibit the Debtor's
13 ability to complete a successful reorganization. Failure to honor the Customer Programs will
14 inevitably lead to the loss of a substantial segment of the Debtor's customer base, which will
15 likely turn to any of the Debtor's competitors, namely the numerous hotel and casino offerings
16 available in Las Vegas, Nevada. Moreover, failure to honor certain of the Customer Programs
17 likely constitutes a violation of various state gaming laws and regulations. See, e.g., NRS 463.
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19 15. In sum, the Debtor believes it is in the best interests of its estate and all of its
20 creditors that it obtain authority to pay holders of Outstanding Gaming Currency and maintain
21 the Customer Programs, in the ordinary course of business, as preserving the Customer Programs
22 during the Chapter 11 Case is critical to protecting the Debtor's operations and preserving the
23 value of the business for the benefit of the estate. Therefore, the Debtor seeks authority from this
24 Court to satisfy certain prepetition obligations and maintain administration of each of the
25 Customer Programs in the ordinary course of business.
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Relief Requested

16. By this Motion, the Debtor seeks an order of this Court authorizing, but not directing the Debtor, in its business judgment, to pay certain prepetition obligations related to the Outstanding Gaming Currency and to maintain administration of the Customer Programs.

Basis for Relief

17. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Under Section 105(a), a court “can permit pre-plan payment of a prepetition obligation where essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D.Va. 1992); see also, In re Just for Feet, Inc., 242 B.R. 821, 826 (D.Del. 1999) (“To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor’s reorganization.”)(internal quotation omitted).

18. Section 363(b) of the Bankruptcy Code allows a debtor in possession to use, sell, or lease property of the estate other than in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1). Bankruptcy courts have approved the payment of critical vendor claims in circumstances where the payments are necessary to protect a debtor’s business operations from substantial disruption. See, e.g., In re Tropical Sportswear Int’l Corp., 320 B.R. 15, 20-21 (Bankr. M.D. Fla. 2005) (allowing critical vendor payments where interruption in flow of goods would “substantially jeopardize the Debtors’ ability to conduct business”). Courts have authorized payment of prepetition obligations under Section 363 of the Bankruptcy Code where a sound business purpose exists for doing so. See, e.g., In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989)(finding that a sound business justification existed to justify payment of certain claims).

1 19. Furthermore, pursuant to Bankruptcy Code sections 1107(a) and 1108, the Debtor
 2 is a fiduciary “holding the bankruptcy estate[s] and operating the business for the benefit of
 3 [their] creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487,
 4 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor-in-possession is the
 5 obligation to “protect and preserve the estate, including an operating business’s going-concern
 6 value.” Id. Some courts have noted that there are instances in which a debtor can fulfill this
 7 fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id.

9 20. Importantly, this Court, as well as other bankruptcy courts around the country,
 10 routinely approve the relief requested in this Motion. See In re Zen Entertainment, Inc., No. 13-
 11 10590 (Bankr. D. Nev. Feb 4, 2013); In re Jerry’s Nugget, Inc., No. 12-19387 (Bankr. D. Nev.
 12 Aug. 17, 2012); In re Riviera Holdings Corp., No. 10-22910 (Bankr. D. Nev. Jul. 25, 2010); In re
 13 155 East Tropicana, LLC, No. 11-22216 (Bankr. D. Nev. Aug. 9, 2011); and In re Caesars
 14 Entertainment Operating Company, Inc., et al, No-15-01145 (Bankr. N.D. Ill. Jan. 15, 2015).

16 21. The Debtor considers the holders of Outstanding Gaming Currency and
 17 continuation of their Customer Programs critical to their operations because the continued
 18 patronage of the Debtor’s resort hotel and casino provide the Debtor with a revenue stream that
 19 is essential to the Debtor’s business; and (b) failure to honor the Outstanding Gaming Currency
 20 or maintain the Customer Programs would result in the loss of customers which would be
 21 detrimental to the Debtor’s successful reorganization.

23 22. Here, the Debtor operates in a highly competitive environment, where customer
 24 satisfaction and the ability to maintain repeat business through exceptional customer service are
 25 of critical importance. Indeed, customer satisfaction is a key component of the Debtor’s
 26 business. Retaining current customers and attracting new customers will ultimately increase the
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1 Debtor's revenue and therefore promote their efforts to successfully reorganize. Accordingly,
2 the Debtor does not want to risk an unnecessary interruption in the operation of its business. The
3 Debtor enjoys relationships with various customers who currently hold Outstanding Gaming
4 Currency or are integral members of the Customer Programs. Each of these patrons are of such
5 critical importance to the Debtor that dishonoring Outstanding Gaming Currency or cessation of
6 the Customer Programs will certainly endanger any meaningful attempt at reorganization and
7 substantially harm all creditors.
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9 23. Finally, the Debtor is required under Nevada law to honor the Outstanding
10 Gaming Currency and could lose its gaming license if it does not honor the Outstanding Gaming
11 Currency. See, e.g. NRS 463. NRS 463.0129(b) for example, reads, the "continued growth and
12 success of gaming is dependent upon public confidence and trust that licensed gaming and the
13 manufacture, sale and distribution of gaming devices and associated equipment are conducted
14 honestly and competitively, that establishments which hold restricted and nonrestricted licenses
15 where gaming is conducted and where gambling devices are operated do not unduly impact the
16 quality of life enjoyed by residents of the surrounding neighborhoods, that the rights of the
17 creditors of licensees are protected and that gaming is free from criminal and corruptive
18 elements. Moreover, NRS 463.150(1)(i) grants the Nevada Gaming Commission the authority to
19 adopt regulations, "[p]rescribing under what conditions the nonpayment of a gambling debt by a
20 licensee shall be deemed grounds for revocation or suspension of the licensee's license." Nevada
21 Gaming Commission Regulation 12.060(2)(c), in turn, states that a licensee that uses chips or
22 tokens at its gaming establishment shall, "[p]romptly redeem its own chips and tokens from its
23 patrons by cash or check drawn on account of the licensee." Moreover, Nevada Gaming
24 Commission Regulation 12.070 states, "A licensee that permanently removes from use or
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1 replaces approved chips or tokens at its gaming establishment, or that ceases operating its
2 gaming establishment whether because of closure or sale of the establishment or any other
3 reason, must prepare a plan for redeeming discontinued chips and tokens that remain outstanding
4 at the time of discontinuance. The licensee must submit the plan in writing to the chairman not
5 later than 30 days before the proposed removal, replacement, sale, or closure, unless the closure
6 or other cause for discontinuance of the chips or tokens cannot reasonably be anticipated, in
7 which event the licensee must submit the plan as soon as reasonably practicable.” Finally,
8 Nevada Gaming Commission Regulation 5.030 provides, “Violation of any provision of the
9 Nevada Gaming Control Act or of these regulations by a licensee, his agent or employee shall be
10 deemed contrary to the public health, safety, morals, good order and general welfare of the
11 inhabitants of the State of Nevada and grounds for suspension or revocation of a license.”
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1 WHEREFORE, the Debtor respectfully requests that this Court enter an Order, in the
2 form or order attached hereto as **Exhibit A**: (i) granting the relief requested in this Motion, and
3 (ii) granting such other and further relief that the Court deems just and proper.

4 DATED this 16th day of February, 2018.

5 Respectfully Submitted,

6 /s/ Samuel A. Schwartz

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